S.B.Civil Writ Petition NO.159/2004

Shesha Ram

vs

Bhawani Singh

DATE OF ORDER : - 17.2.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. O.P.Rajpurohit, for the petitioner.
Mr. R.S.Chundawat, for the respondent.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 7.10.2003 by which the trial court allowed the petitioner-defendant's application for leave to defend suit, but on condition of furnishing bank guarantee for Rs.64,780/-. The petitioner is aggrieved against the imposition of furnishing bank guarantee.

The order was passed against the petitioner on 7.10.2003. He was allowed time of more than one month to furnish the bank guarantee, but he did not furnish the bank guarantee in time. The petitioner submitted a review petition before the trial court, which appears to have been submitted only on 18th Nov., 2003, the date by which

petitioner should have furnished the bank guarantee. The said review petition of the petitioner was dismissed by the trial court by order dated 18th Nov., 2003 itself and the trial court further granted time to the petitioner to furnish the bank guarantee by 2nd Dec., 2003. The petitioner submitted the present writ petition after one month from the expiry of last date given second time by the trial court for furnishing the bank guarantee. Meanwhile, the petitioner submitted the bank guarantee before the trial court and complied with the order of the trial court in the suit filed under Order 37 CPC, which is summary suit.

In view of the above facts only, the writ petition of the petitioner deserves to be dismissed on the ground of inordinate delay in a matter where petitioner was supposed to act promptly to save his defence in the suit. The trial court granted time twice to the petitioner in a money suit for furnishing bank guarantee, but the petitioner failed to furnish the same in time.

Apart from above, learned counsel for the respondent informed that the petitioner-defendant has not filed written statement, therefore, his right to file the written statement has already been closed by the trial court despite the fact that the petitioner furnished the bank guarantee before the court. The said order has not been challenged by the petitioner till now.

Learned counsel for the petitioner submits that petitioner intended to file counter claim also,which he has made clear in his application for leave to defend. If it is so then as per the sub-rule (1) of Rule 6A of Order 8 CPC itself, it is clear that the counter claim can be filed by the defendant before the time limit for delivering his defence has expired. However, since the present writ petition has been filed to challenge the order imposing the condition of furnishing the bank guarantee, therefore, no relief can be granted to the petitioner in this writ petition.

In view of the above, I do not find any reason to interfere in the order passed by the trial court directing the petitioner to furnish bank guarantee in a money suit after such delay and where the petitioner has submitted the bank guarantee. Hence, the writ petition of the petitioner is dismissed.

(Prakash Tatia), J.

Chandra Prakash/-